

FIRST REGULAR SESSION

HOUSE BILL NO. 337

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROSS, BARNETT AND BRITT (Co-sponsors).

Read 1st time January 11, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

0588L.011

AN ACT

To repeal sections 302.302, 302.309, 302.541, 577.010, 577.012, 577.020, 577.023, 577.037, 577.039, 577.041, 577.048, and 577.049, RSMo 2000, relating to public safety offenses involving alcohol, and to enact in lieu thereof thirteen new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 302.302, 302.309, 302.541, 577.010, 577.012, 577.020, 577.023, 577.037, 577.039, 577.041, 577.048, and 577.049, RSMo 2000, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 302.302, 302.309, 302.541, 577.010, 577.012, 577.015, 577.020, 577.023, 577.037, 577.039, 577.041, 577.048, and 577.049, to read as follows:

302.302. 1. The director of revenue shall put into effect a point system for the suspension and revocation of licenses. Points shall be assessed only after a conviction or forfeiture of collateral. The initial point value is as follows:

(1) Any moving violation of a state law or county or municipal or federal traffic ordinance or regulation not listed in this section, other than a violation of vehicle equipment provisions or a court-ordered supervision as provided in section 302.303 2 points

(except any violation of municipal stop sign ordinance where no accident is involved 1 point)

(2) Speeding

In violation of a state law 3 points

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12	In violation of a county or municipal ordinance	2 points
13	(3) Leaving the scene of an accident in violation of section 577.060,	
14	RSMo	12 points
15	In violation of any county or municipal ordinance	6 points
16	(4) Careless and imprudent driving in violation of subsection 4 of section	
17	304.016, RSMo	4 points
18	In violation of a county or municipal ordinance	2 points
19	(5) Operating without a valid license in violation of subdivision (1) or (2) of subsection	
20	1 of section 302.020:	
21	(a) For the first conviction	2 points
22	(b) For the second conviction	4 points
23	(c) For the third conviction	6 points
24	(6) Operating with a suspended or revoked license prior to restoration of	
25	operating privileges	12 points
26	(7) Obtaining a license by misrepresentation	12 points
27	(8) For the first conviction of driving while in an intoxicated condition or	
28	under the influence of controlled substances or drugs	8 points
29	(9) For the second or subsequent conviction of any of the following offenses	
30	however combined: driving while in an intoxicated condition, driving under the	
31	influence of controlled substances or drugs [or], driving with a blood alcohol	
32	content of ten-hundredths of one percent or more by weight or driving with a blood	
33	alcohol content of fifteen-hundredths of one percent or more by weight	12 points
34	(10) For the first conviction for driving with blood alcohol content	
35	ten-hundredths of one percent or more by weight	
36	In violation of state law	8 points
37	In violation of a county or municipal ordinance or federal law or	
38	regulation	8 points
39	(11) Any felony involving the use of a motor vehicle	12 points
40	(12) Knowingly permitting unlicensed operator to operate a motor	
41	vehicle	4 points
42	(13) For a conviction for failure to maintain financial responsibility pursuant to county	
43	or municipal ordinance or pursuant to section 303.025, RSMo	4 points
44	2. The director shall, as provided in subdivision (5) of subsection 1 of this section, assess	
45	an operator points for a conviction pursuant to subdivision (1) or (2) of subsection 1 of section	
46	302.020, when the director issues such operator a license or permit pursuant to the provisions	
47	of sections 302.010 to 302.340.	

48 3. An additional two points shall be assessed when personal injury or property damage
49 results from any violation listed in subsection 1 of this section and if found to be warranted and
50 certified by the reporting court.

51 4. When any of the acts listed in subdivision (2), (3), (4) or (8) of subsection 1 of this
52 section constitutes both a violation of a state law and a violation of a county or municipal
53 ordinance, points may be assessed for either violation but not for both. Notwithstanding that an
54 offense arising out of the same occurrence could be construed to be a violation of subdivisions
55 (8), (9) and (10) of subsection 1 of this section, no person shall be tried or convicted for more
56 than one offense pursuant to subdivisions (8), (9) and (10) of subsection 1 of this section for
57 offenses arising out of the same occurrence.

58 5. The director of revenue shall put into effect a system for staying the assessment of
59 points against an operator. The system shall provide that the satisfactory completion of a
60 driver-improvement program or, in the case of violations committed while operating a
61 motorcycle, a motorcycle-rider training course approved by the director of the department of
62 public safety, by an operator, when so ordered and verified by any court having jurisdiction over
63 any law of this state or county or municipal ordinance, regulating motor vehicles, other than a
64 violation committed in a commercial motor vehicle as defined in section 302.700, shall be
65 accepted by the director in lieu of the assessment of points for a violation pursuant to subdivision
66 (1), (2), or (4) of subsection 1 of this section or pursuant to subsection 3 of this section. For the
67 purposes of this subsection, the driver-improvement program shall meet or exceed the standards
68 of the National Safety Council's eight-hour "Defensive Driving Course" or, in the case of a
69 violation which occurred during the operation of a motorcycle, the program shall meet the
70 standards established by the director of the department of public safety pursuant to sections
71 302.133 to 302.138. The completion of a driver-improvement program or a motorcycle-rider
72 training course shall not be accepted in lieu of points more than one time in any thirty-six-month
73 period and shall be completed within sixty days of the date of conviction in order to be accepted
74 in lieu of the assessment of points. Every court having jurisdiction pursuant to the provisions
75 of this subsection shall, within fifteen days after completion of the driver-improvement program
76 or motorcycle-rider training course by an operator, forward a record of the completion to the
77 director, all other provisions of the law to the contrary notwithstanding. The director shall
78 establish procedures for record keeping and the administration of this subsection.

 302.309. 1. Whenever any license is suspended pursuant to sections 302.302 to 302.309,
2 the director of revenue shall return the license to the operator immediately upon the termination
3 of the period of suspension and upon compliance with the requirements of chapter 303, RSMo.

4 2. Any operator whose license is revoked pursuant to these sections, upon the
5 termination of the period of revocation, shall apply for a new license in the manner prescribed

6 by law.

7 3. (1) All circuit courts or the director of revenue shall have jurisdiction to hear
8 applications and make eligibility determinations granting limited driving privileges. Any
9 application may be made in writing to the director of revenue and the person's reasons for
10 requesting the limited driving privilege shall be made therein.

11 (2) When any court of record having jurisdiction or the director of revenue finds that an
12 operator is required to operate a motor vehicle in connection with any of the following:

13 (a) A business, occupation, or employment;

14 (b) Seeking medical treatment for such operator;

15 (c) Attending school or other institution of higher education;

16 (d) Attending alcohol or drug treatment programs; or

17 (e) Any other circumstance the court or director finds would create an undue hardship
18 on the operator; the court or director may grant such limited driving privilege as the
19 circumstances of the case justify if the court or director finds undue hardship would result to the
20 individual, and while so operating a motor vehicle within the restrictions and limitations of the
21 limited driving privilege the driver shall not be guilty of operating a motor vehicle without a
22 valid license.

23 (3) An operator may make application to the proper court in the county in which such
24 operator resides or in the county in which is located the operator's principal place of business or
25 employment. Any application for a limited driving privilege made to a circuit court shall name
26 the director as a party defendant and shall be served upon the director prior to the grant of any
27 limited privilege, and shall be accompanied by a copy of the applicant's driving record as
28 certified by the director. Any applicant for a limited driving privilege shall have on file with the
29 department of revenue proof of financial responsibility as required by chapter 303, RSMo. Any
30 application by a person who transports persons or property as classified in section 302.015 may
31 be accompanied by proof of financial responsibility as required by chapter 303, RSMo, but if
32 proof of financial responsibility does not accompany the application, or if the applicant does not
33 have on file with the department of revenue proof of financial responsibility, the court or the
34 director has discretion to grant the limited driving privilege to the person solely for the purpose
35 of operating a vehicle whose owner has complied with chapter 303, RSMo, for that vehicle, and
36 the limited driving privilege must state such restriction. When operating such vehicle under such
37 restriction the person shall carry proof that the owner has complied with chapter 303, RSMo, for
38 that vehicle.

39 (4) The court order or the director's grant of the limited driving privilege shall indicate
40 the termination date of the privilege, which shall be not later than the end of the period of
41 suspension or revocation. A copy of any court order shall be sent by the clerk of the court to the

42 director, and a copy shall be given to the driver which shall be carried by the driver whenever
43 such driver operates a motor vehicle. The director of revenue upon granting a limited driving
44 privilege shall give a copy of the limited driving privilege to the applicant. The applicant shall
45 carry a copy of the limited driving privilege while operating a motor vehicle. A conviction
46 which results in the assessment of points pursuant to section 302.302, other than a violation of
47 a municipal stop sign ordinance where no accident is involved, against a driver who is operating
48 a vehicle pursuant to a limited driving privilege terminates the privilege, as of the date the points
49 are assessed to the person's driving record. If the date of arrest is prior to the issuance of the
50 limited driving privilege, the privilege shall not be terminated. The director shall notify by
51 ordinary mail the driver whose privilege is so terminated.

52 (5) Except as provided in subdivision (6) of this subsection, no person is eligible to
53 receive a limited driving privilege who at the time of application for a limited driving privilege
54 has previously been granted such a privilege within the immediately preceding five years, or
55 whose license has been suspended or revoked for the following reasons:

56 (a) A conviction of violating the provisions of section 577.010 [or], 577.012, **or 577.015**,
57 RSMo, or any similar provision of any federal or state law, or a municipal or county law where
58 the judge in such case was an attorney and the defendant was represented by or waived the right
59 to an attorney in writing, until the person has completed the first thirty days of a suspension or
60 revocation imposed pursuant to this chapter;

61 (b) A conviction of any felony in the commission of which a motor vehicle was used;

62 (c) Ineligibility for a license because of the provisions of subdivision (1), (2), (4), (5),
63 (6), (7), (8), (9), (10) or (11) of section 302.060;

64 (d) Because of operating a motor vehicle under the influence of narcotic drugs, a
65 controlled substance as defined in chapter 195, RSMo, or having left the scene of an accident as
66 provided in section 577.060, RSMo;

67 (e) Due to a revocation for the first time for failure to submit to a chemical test pursuant
68 to section 577.041, RSMo, or due to a refusal to submit to a chemical test in any other state, if
69 such person has not completed the first ninety days of such revocation;

70 (f) Violation more than once of the provisions of section 577.041, RSMo, or a similar
71 implied consent law of any other state;

72 (g) Disqualification of a commercial driver's license pursuant to sections 302.700 to
73 302.780, however, nothing in this subsection shall prevent a person holding a commercial
74 driver's license who is suspended or revoked as a result of an action occurring while not driving
75 a commercial motor vehicle or driving for pay, but while driving in an individual capacity as an
76 operator of a personal vehicle from applying for a limited driving privilege to operate a
77 commercial vehicle, if otherwise eligible for such limited privilege; or

78 (h) Due to a suspension pursuant to subsection 2 of section 302.525 and who has not
79 completed the first thirty days of such suspension, provided the person is not otherwise ineligible
80 for a limited driving privilege; or due to a revocation pursuant to subsection 2 of section 302.525
81 if such person has not completed such revocation.

82 (6) (a) Provided that pursuant to the provisions of this section, the applicant is not
83 otherwise ineligible for a limited driving privilege, a circuit court or the director may, in the
84 manner prescribed in this subsection, allow a person who has had such person's license to operate
85 a motor vehicle revoked where that person cannot obtain a new license for a period of ten years,
86 as prescribed in subdivision (9) of section 302.060, to apply for a limited driving privilege
87 pursuant to this subsection if such person has served at least three years of such disqualification
88 or revocation. Such person shall present evidence satisfactory to the court or the director that
89 such person has not been convicted of any offense related to alcohol, controlled substances or
90 drugs during the preceding three years and that the person's habits and conduct show that the
91 person no longer poses a threat to the public safety of this state.

92 (b) Provided that pursuant to the provisions of this section, the applicant is not otherwise
93 ineligible for a limited driving privilege or convicted of involuntary manslaughter while
94 operating a motor vehicle in an intoxicated condition, a circuit court or the director may, in the
95 manner prescribed in this subsection, allow a person who has had such person's license to operate
96 a motor vehicle revoked where that person cannot obtain a new license for a period of five years
97 because of two convictions of driving while intoxicated, as prescribed in subdivision (10) of
98 section 302.060, to apply for a limited driving privilege pursuant to this subsection if such person
99 has served at least two years of such disqualification or revocation. Such person shall present
100 evidence satisfactory to the court or the director that such person has not been convicted of any
101 offense related to alcohol, controlled substances or drugs during the preceding two years and that
102 the person's habits and conduct show that the person no longer poses a threat to the public safety
103 of this state. Any person who is denied a license permanently in this state because of an
104 alcohol-related conviction subsequent to a restoration of such person's driving privileges
105 pursuant to subdivision (9) of section 302.060 shall not be eligible for limited driving privilege
106 pursuant to the provisions of this subdivision.

107 4. Any person who has received notice of denial of a request of limited driving privilege
108 by the director of revenue may make a request for a review of the director's determination in the
109 circuit court of the county in which the person resides or the county in which is located the
110 person's principal place of business or employment within thirty days of the date of mailing of
111 the notice of denial. Such review shall be based upon the records of the department of revenue
112 and other competent evidence and shall be limited to a review of whether the applicant was
113 statutorily entitled to the limited driving privilege.

114 5. The director of revenue shall promulgate rules and regulations necessary to carry out
115 the provisions of this section.

302.541. 1. In addition to other fees required by law, any person who has had a license
2 to operate a motor vehicle suspended or revoked following a determination, pursuant to section
3 302.505, or section 577.010, 577.012, **577.015**, 577.041 or 577.510, RSMo, or any county or
4 municipal ordinance, where the judge in such case was an attorney and the defendant was
5 represented by or waived the right to an attorney, that such person was driving while intoxicated
6 or with a blood alcohol content of ten-hundredths of one percent or more by weight or, where
7 such person was at the time of the arrest less than twenty-one years of age and was driving with
8 a blood alcohol content of two-hundredths of one percent or more by weight, shall pay an
9 additional fee of twenty-five dollars prior to the reinstatement or reissuance of the license.

10 2. Any person less than twenty-one years of age whose driving privilege has been
11 suspended or revoked solely for a first determination pursuant to sections 302.500 to 302.540
12 that such person was driving a motor vehicle with two-hundredths of one percent or more blood
13 alcohol content is exempt from filing proof of financial responsibility with the department of
14 revenue in accordance with chapter 303, RSMo, as a prerequisite for reinstatement of driving
15 privileges or obtaining a restricted driving privilege as provided by section 302.525.

577.010. 1. A person commits the crime of "driving while intoxicated" if [he] **such**
2 **person** operates a motor vehicle while in an intoxicated or drugged condition.

3 2. Driving while intoxicated is for the first offense, a class B misdemeanor. [No person
4 convicted of or pleading guilty to the offense of driving while intoxicated shall be granted a
5 suspended imposition of sentence for such offense, unless such person shall be placed on
6 probation for a minimum of two years.] **Any person convicted for a first offense pursuant to**
7 **this section shall be sentenced to a minimum incarceration of forty-eight consecutive hours**
8 **and the imposition of this sentence shall not be suspended.**

577.012. 1. A person commits the crime of "driving with excessive blood alcohol
2 content" if such person operates a motor vehicle in this state with [ten-hundredths] **fifteen-**
3 **hundredths** of one percent or more by weight of alcohol in such person's blood, **or operates a**
4 **motor vehicle with ten-hundredths of one percent or more subsequent to a prior**
5 **intoxication-related traffic offense.**

6 2. As used in this section, percent by weight of alcohol in the blood shall be based upon
7 grams of alcohol per one hundred milliliters of blood or two hundred ten liters of breath and may
8 be shown by chemical analysis of the person's blood, breath, saliva or urine. For the purposes
9 of determining the alcoholic content of a person's blood [under] **pursuant to** this section, the test
10 shall be conducted in accordance with the provisions of sections 577.020 to 577.041.

11 3. For the first offense, driving with excessive blood alcohol content is a class [C] **A**

12 misdemeanor. Any person convicted for a first offense pursuant to this section shall be
13 sentenced to a minimum incarceration of forty-eight consecutive hours and the imposition
14 of this sentence shall not be suspended.

577.015. 1. This section shall be known and may be cited as the "Ferrara Act".

2 2. A person is guilty of "recklessly contributing to an accident" if such person,
3 while operating a motor vehicle in this state with greater than eight one-hundredths of one
4 percent by weight of alcohol in such person's blood, contributes to an accident which
5 results in a readily apparent serious physical injury as defined in section 565.002, RSMo,
6 or which results in the death of any person.

7 3. Upon notification by the court, the department of revenue shall, for the first
8 conviction of recklessly contributing to an accident, suspend such person's driver's license
9 and driving privilege shall be suspended for one hundred eighty days. During the one
10 hundred eighty day suspension period, such person may apply for limited driving
11 privileges pursuant to section 302.309, RSMo. Following the one hundred eighty day
12 suspension period, the director of the department of revenue shall issue such person a
13 limited driving privilege for one year if such person has filed proof of financial
14 responsibility with the department of revenue, in accordance with chapter 303, RSMo.
15 Upon completion of such period of restricted driving privilege, payment of the fee required
16 by section 302.541, RSMo, upon compliance with other requirements of law and upon the
17 filing of proof of financial responsibility with the department of revenue, in accordance
18 with chapter 303, RSMo, the license and driving privilege shall be reinstated.

19 4. Upon notification by the court, the department of revenue shall, for the second
20 conviction of recklessly contributing to an accident or a first conviction of recklessly
21 contributing to an accident subsequent to a conviction for any other intoxication-related
22 offense as defined in section 577.023, RSMo, such person's driver's license and privileges
23 shall be revoked for a period of one year. Such person may apply for limited driving
24 privileges pursuant to section 302.309, RSMo. During the one year revocation period, such
25 person may apply for limited driving privileges pursuant to section 302.309, RSMo. Upon
26 completion of such one year period, payment of the fee required by section 302.541, RSMo,
27 upon compliance with other requirements of law and upon the filing of proof of financial
28 responsibility with the department of revenue, in accordance with chapter 303, RSMo, the
29 license and driving privilege shall be reinstated.

30 5. No person who has his or her license suspended or revoked pursuant to this
31 section shall have his or her license reinstated until he or she has participated in and
32 successfully completed an alcohol related traffic offender program as provided in section
33 302.540, RSMo.

34 **6. Recklessly contributing to an accident is a class B felony.**

35 **7. No person shall be tried or convicted pursuant to this section if such person is**
36 **tried or convicted pursuant to any other provision of law for offenses arising out of the**
37 **same occurrence.**

38 **8. A person convicted of violating this section shall receive the maximum**
39 **suspension or revocation provided by law, whether such suspension or revocation be**
40 **pursuant to this section or otherwise. However, no suspension or revocation shall be**
41 **imposed pursuant to this section if a greater suspension or revocation is imposed pursuant**
42 **to any other provision of law and no suspension or revocation shall be imposed pursuant**
43 **to any other provision of law if a suspension or revocation is imposed pursuant to this**
44 **section.**

 577.020. 1. Any person who operates a motor vehicle upon the public highways of this
2 state shall be deemed to have given consent to, subject to the provisions of sections 577.020 to
3 577.041, a chemical test or tests of the person's breath, blood, saliva or urine for the purpose of
4 determining the alcohol or drug content of the person's blood pursuant to the following
5 circumstances:

6 (1) If the person is arrested for any offense arising out of acts which the arresting officer
7 had reasonable grounds to believe were committed while the person was driving a motor vehicle
8 while in an intoxicated or drugged condition; or

9 (2) If the person is under the age of twenty-one, has been stopped by a law enforcement
10 officer, and the law enforcement officer has reasonable grounds to believe that such person was
11 driving a motor vehicle with a blood alcohol content of two-hundredths of one percent or more
12 by weight; or

13 (3) If the person is under the age of twenty-one, has been stopped by a law enforcement
14 officer, and the law enforcement officer has reasonable grounds to believe that such person has
15 committed a violation of the traffic laws of the state, or any political subdivision of the state, and
16 such officer has reasonable grounds to believe, after making such stop, that such person has a
17 blood alcohol content of two-hundredths of one percent or greater; [or]

18 (4) If the person is under the age of twenty-one, has been stopped at a sobriety
19 checkpoint or roadblock and the law enforcement officer has reasonable grounds to believe that
20 such person has a blood alcohol content of two-hundredths of one percent or greater[.]; or

21 **(5) If the person, while operating a motor vehicle, was involved in a motor vehicle**
22 **accident which resulted in a readily apparent serious physical injury as defined in section**
23 **565.002, RSMo, or death, and such person is arrested as evidenced by the issuance of a**
24 **traffic ticket for the violation of any state law or county or municipal ordinance with the**
25 **exception of equipment violations contained in chapter 306, RSMo, or similar provisions**

26 **contained in a county or municipal ordinance.** The test shall be administered at the direction
27 of the law enforcement officer [whenever the person has been arrested or stopped for any
28 reason].

29 2. The implied consent to submit to the chemical tests listed in subsection 1 of this
30 section shall be limited to not more than two such tests arising from the same arrest, incident or
31 charge.

32 3. Chemical analysis of the person's breath, blood, saliva, or urine to be considered valid
33 pursuant to the provisions of sections 577.020 to 577.041 shall be performed according to
34 methods approved by the state department of health by licensed medical personnel or by a person
35 possessing a valid permit issued by the state department of health for this purpose.

36 4. The state department of health shall approve satisfactory techniques, devices,
37 equipment, or methods to be considered valid pursuant to the provisions of sections 577.020 to
38 577.041 and shall establish standards to ascertain the qualifications and competence of
39 individuals to conduct analyses and to issue permits which shall be subject to termination or
40 revocation by the state department of health.

41 5. The person tested may have a physician, or a qualified technician, chemist, registered
42 nurse, or other qualified person at the choosing and expense of the person to be tested, administer
43 a test in addition to any administered at the direction of a law enforcement officer. The failure
44 or inability to obtain an additional test by a person shall not preclude the admission of evidence
45 relating to the test taken at the direction of a law enforcement officer.

46 6. Upon the request of the person who is tested, full information concerning the test shall
47 be made available to [him] **such person.**

48 7. Any person given a chemical test of the person's breath pursuant to subsection 1 of
49 this section or a field sobriety test may be videotaped during any such test at the direction of the
50 law enforcement officer. Any such video recording made during the chemical test pursuant to
51 this subsection or a field sobriety test shall be admissible as evidence at either any trial of such
52 person for either a violation of any state law or county or municipal ordinance, or any license
53 revocation or suspension proceeding pursuant to the provisions of chapter 302, RSMo.

577.023. 1. For purposes of this section, unless the context clearly indicates otherwise:

2 (1) An "intoxication-related traffic offense" is driving while intoxicated, driving with
3 excessive blood alcohol content, **recklessly contributing to an accident, pursuant to section**
4 **577.015**, involuntary manslaughter pursuant to subdivision (2) of subsection 1 of section
5 565.024, RSMo, assault in the second degree pursuant to subdivision (4) of subsection 1 of
6 section 565.060, RSMo, assault of a law enforcement officer in the second degree pursuant to
7 subdivision (3) of subsection 1 of section 565.082, RSMo, or driving under the influence of
8 alcohol or drugs in violation of state law or a county or municipal ordinance, where the judge in

9 such case was an attorney and the defendant was represented by or waived the right to an
10 attorney in writing;

11 (2) A "persistent offender" is one of the following:

12 (a) A person who has pleaded guilty to or has been found guilty of two or more
13 intoxication-related traffic offenses, where such two or more offenses occurred within ten years
14 of the occurrence of the intoxication-related traffic offense for which the person is charged;

15 (b) A person who has pleaded guilty to or has been found guilty of **recklessly**
16 **contributing to an accident pursuant to section 577.015**, involuntary manslaughter pursuant
17 to subsection 1 of section 565.024, RSMo, assault in the second degree pursuant to subdivision
18 (4) of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in the second
19 degree pursuant to subdivision (3) of subsection 1 of section 565.082, RSMo; and

20 (3) A "prior offender" is a person who has pleaded guilty to or has been found guilty of
21 one intoxication-related traffic offense, where such prior offense occurred within five years of
22 the occurrence of the intoxication-related traffic offense for which the person is charged.

23 2. Any person who pleads guilty to or is found guilty of a violation of section 577.010
24 or 577.012 who is alleged and proved to be a prior offender shall be guilty of a class A
25 misdemeanor.

26 3. Any person who pleads guilty to or is found guilty of a violation of section 577.010
27 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D
28 felony.

29 4. No court shall suspend the imposition of sentence as to a prior or persistent offender
30 **[under] pursuant to** this section nor sentence such person to pay a fine in lieu of a term of
31 imprisonment, section 557.011, RSMo, to the contrary notwithstanding, nor shall such person
32 be eligible for parole or probation until [he] **such person** has served a minimum of [forty-eight
33 consecutive hours' imprisonment, unless as a condition of such parole or probation such person
34 performs at least ten days of community service under the supervision of the court in those
35 jurisdictions which have a recognized program for community service] **ten consecutive days**
36 **imprisonment when convicted as a prior offender or thirty consecutive days imprisonment**
37 **when convicted as a persistent offender.**

38 5. The court shall find the defendant to be a prior offender or persistent offender, if:

39 (1) The indictment or information, original or amended, or the information in lieu of an
40 indictment pleads all essential facts warranting a finding that the defendant is a prior offender
41 or persistent offender; and

42 (2) Evidence is introduced that establishes sufficient facts pleaded to warrant a finding
43 beyond a reasonable doubt the defendant is a prior offender or persistent offender; and

44 (3) The court makes findings of fact that warrant a finding beyond a reasonable doubt

45 by the court that the defendant is a prior offender or persistent offender.

46 6. In a jury trial, the facts shall be pleaded, established and found prior to submission to
47 the jury outside of its hearing.

48 7. In a trial without a jury or upon a plea of guilty, the court may defer the proof in
49 findings of such facts to a later time, but prior to sentencing.

50 8. The defendant shall be accorded full rights of confrontation and cross-examination,
51 with the opportunity to present evidence, at such hearings.

52 9. The defendant may waive proof of the facts alleged.

53 10. Nothing in this section shall prevent the use of presentence investigations or
54 commitments.

55 11. At the sentencing hearing both the state and the defendant shall be permitted to
56 present additional information bearing on the issue of sentence.

57 12. The pleas or findings of guilty shall be prior to the date of commission of the present
58 offense.

59 13. The court shall not instruct the jury as to the range of punishment or allow the jury,
60 upon a finding of guilty, to assess and declare the punishment as part of its verdict in cases of
61 prior offenders or persistent offenders.

62 14. Evidence of prior convictions shall be heard and determined by the trial court out of
63 the hearing of the jury prior to the submission of the case to the jury, and shall include but not
64 be limited to evidence of convictions received by a search of the records of the Missouri uniform
65 law enforcement system maintained by the Missouri state highway patrol. After hearing the
66 evidence, the court shall enter its findings thereon. A conviction of a violation of a municipal or
67 county ordinance in a county or municipal court for driving while intoxicated or a conviction or
68 a plea of guilty or a finding of guilty followed by a suspended imposition of sentence, suspended
69 execution of sentence, probation or parole or any combination thereof in a state court shall be
70 treated as a prior conviction.

577.037. 1. Upon the trial of any person for violation of any of the provisions of section
2 565.024[, RSMo,] or [section] 565.060, RSMo, or section 577.010 [or], 577.012, **or 577.015,**
3 or upon the trial of any criminal action or violations of county or municipal ordinances or in any
4 license suspension or revocation proceeding pursuant to the provisions of chapter 302, RSMo,
5 arising out of acts alleged to have been committed by any person while driving a motor vehicle
6 while in an intoxicated condition, the amount of alcohol in the person's blood at the time of the
7 act alleged as shown by any chemical analysis of the person's blood, breath, saliva or urine is
8 admissible in evidence and the provisions of subdivision (5) of section 491.060, RSMo, shall not
9 prevent the admissibility or introduction of such evidence if otherwise admissible. If there was
10 ten-hundredths of one percent or more by weight of alcohol in the person's blood, this shall be

11 prima facie evidence that the person was intoxicated at the time the specimen was taken.

12 2. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per
13 one hundred milliliters of blood or grams of alcohol per two hundred ten liters of breath.

14 3. The foregoing provisions of this section shall not be construed as limiting the
15 introduction of any other competent evidence bearing upon the question whether the person was
16 intoxicated.

17 4. A chemical analysis of a person's breath, blood, saliva or urine, in order to give rise
18 to the presumption or to have the effect provided for in subsection 1 of this section, shall have
19 been performed as provided in sections 577.020 to 577.041 and in accordance with methods and
20 standards approved by the state department of health.

21 5. Any charge alleging a violation of section 577.010 or 577.012 or any county or
22 municipal ordinance prohibiting driving while intoxicated or driving under the influence of
23 alcohol shall be dismissed with prejudice if a chemical analysis of the defendant's breath, blood,
24 saliva, or urine performed in accordance with sections 577.020 to 577.041 and rules promulgated
25 thereunder by the state department of health demonstrate that there was less than ten-hundredths
26 of one percent of alcohol in the defendant's blood unless one or more of the following
27 considerations cause the court to find a dismissal unwarranted:

28 (1) There is evidence that the chemical analysis is unreliable as evidence of the
29 defendant's intoxication at the time of the alleged violation due to the lapse of time between the
30 alleged violation and the obtaining of the specimen;

31 (2) There is evidence that the defendant was under the influence of a controlled
32 substance, or drug, or a combination of either or both with or without alcohol; or

33 (3) There is substantial evidence of intoxication from physical observations of witnesses
34 or admissions of the defendant.

577.039. An arrest without a warrant by a law enforcement officer, including a
2 uniformed member of the state highway patrol, for a violation of section 577.010 [or], 577.012
3 **or 577.015**, is lawful whenever the arresting officer has reasonable grounds to believe that the
4 person to be arrested has violated the section, whether or not the violation occurred in the
5 presence of the arresting officer and when such arrest without warrant is made within one and
6 one-half hours after such claimed violation occurred, unless the person to be arrested has left the
7 scene of an accident or has been removed from the scene to receive medical treatment, in which
8 case such arrest without warrant may be made more than one and one-half hours after such
9 violation occurred.

577.041. 1. If a person under arrest, or who has been stopped pursuant to subdivision
2 (2) or (3) of subsection 1 of section 577.020, refuses upon the request of the officer to submit to
3 any test allowed pursuant to section 577.020, then none shall be given and evidence of the refusal

4 shall be admissible in a proceeding pursuant to section 565.024 or 565.060, RSMo, or section
5 577.010 [or], 577.012 **or 577.015**. The request of the officer shall include the reasons of the
6 officer for requesting the person to submit to a test and also shall inform the person that evidence
7 of refusal to take the test may be used against such person and that the person's license shall be
8 immediately revoked upon refusal to take the test. If a person when requested to submit to any
9 test allowed pursuant to section 577.020 requests to speak to an attorney, the person shall be
10 granted twenty minutes in which to attempt to contact an attorney. If upon the completion of the
11 twenty-minute period the person continues to refuse to submit to any test, it shall be deemed a
12 refusal. In this event, the officer shall, on behalf of the director of revenue, serve the notice of
13 license revocation personally upon the person and shall take possession of any license to operate
14 a motor vehicle issued by this state which is held by that person. The officer shall issue a
15 temporary permit, on behalf of the director of revenue, which is valid for fifteen days and shall
16 also give the person a notice of such person's right to file a petition for review to contest the
17 license revocation.

18 2. The officer shall make a sworn report to the director of revenue, which shall include
19 the following:

20 (1) That the officer has:

21 (a) Reasonable grounds to believe that the arrested person was driving a motor vehicle
22 while in an intoxicated or drugged condition; or

23 (b) Reasonable grounds to believe that the person stopped, being under the age of
24 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths
25 of one percent or more by weight; or

26 (c) Reasonable grounds to believe that the person stopped, being under the age of
27 twenty-one years, was committing a violation of the traffic laws of the state, or political
28 subdivision of the state, and such officer has reasonable grounds to believe, after making such
29 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater;

30 (2) That the person refused to submit to a chemical test;

31 (3) Whether the officer secured the license to operate a motor vehicle of the person;

32 (4) Whether the officer issued a fifteen-day temporary permit;

33 (5) Copies of the notice of revocation, the fifteen-day temporary permit and the notice
34 of the right to file a petition for review, which notices and permit may be combined in one
35 document; and

36 (6) Any license to operate a motor vehicle which the officer has taken into possession.

37 3. Upon receipt of the officer's report, the director shall revoke the license of the person
38 refusing to take the test for a period of one year; or if the person is a nonresident, such person's
39 operating permit or privilege shall be revoked for one year; or if the person is a resident without

40 a license or permit to operate a motor vehicle in this state, an order shall be issued denying the
41 person the issuance of a license or permit for a period of one year.

42 4. If a person's license has been revoked because of the person's refusal to submit to a
43 chemical test, such person may petition for a hearing before a circuit or associate circuit court
44 in the county in which the arrest or stop occurred. The person may request such court to issue
45 an order staying the revocation until such time as the petition for review can be heard. If the
46 court, in its discretion, grants such stay, it shall enter the order upon a form prescribed by the
47 director of revenue and shall send a copy of such order to the director. Such order shall serve
48 as proof of the privilege to operate a motor vehicle in this state and the director shall maintain
49 possession of the person's license to operate a motor vehicle until termination of any revocation
50 pursuant to this section. Upon the person's request the clerk of the court shall notify the
51 prosecuting attorney of the county and the prosecutor shall appear at the hearing on behalf of the
52 director of revenue. At the hearing the court shall determine only:

53 (1) Whether or not the person was arrested or stopped;

54 (2) Whether or not the officer had:

55 (a) Reasonable grounds to believe that the person was driving a motor vehicle while in
56 an intoxicated or drugged condition; or

57 (b) Reasonable grounds to believe that the person stopped, being under the age of
58 twenty-one years, was driving a motor vehicle with a blood alcohol content of two-hundredths
59 of one percent or more by weight; or

60 (c) Reasonable grounds to believe that the person stopped, being under the age of
61 twenty-one years, was committing a violation of the traffic laws of the state, or political
62 subdivision of the state, and such officer had reasonable grounds to believe, after making such
63 stop, that the person had a blood alcohol content of two-hundredths of one percent or greater; and

64 (3) Whether or not the person refused to submit to the test.

65 5. If the court determines any issue not to be in the affirmative, the court shall order the
66 director to reinstate the license or permit to drive.

67 6. Requests for review as provided in this section shall go to the head of the docket of
68 the court wherein filed.

69 7. No person who has had a license to operate a motor vehicle suspended or revoked
70 pursuant to the provisions of this section shall have that license reinstated until such person has
71 participated in and successfully completed a substance abuse traffic offender program defined
72 in section 577.001, except the department or the court may waive such requirement upon
73 completion of a comparable program or upon good cause shown or the court may waive such
74 requirement upon good cause shown. The court in making this determination shall consider the
75 person's driving record, the circumstances surrounding the offense and the likelihood of the

76 person committing a like offense in the future. Assignment recommendations, based upon the
77 needs assessment as described in subdivision (21) of section 302.010, RSMo, shall be delivered
78 in writing to the person with written notice that the person is entitled to have such assignment
79 recommendations reviewed by the court if the person objects to the recommendations. The
80 person may file a motion in the associate division of the circuit court, on a printed form provided
81 by the state courts administrator, to have the court hear and determine such motion pursuant to
82 the provisions of chapter 517, RSMo, after reviewing such assessment. The motion shall name
83 the person or entity making the needs assessment as the respondent and a copy of the motion
84 shall be served upon the respondent in any manner allowed by law. Such assessment and
85 compliance with the court determination of the motion shall satisfy the provisions of this section
86 for the purpose of reinstating such person's license to operate a motor vehicle. The respondent's
87 personal appearance at any hearing conducted pursuant to this subsection shall not be necessary
88 unless directed by the court.

89 8. The fees for the substance abuse traffic offender program, or a portion thereof to be
90 determined by the division of alcohol and drug abuse of the department of mental health, shall
91 be paid by the person enrolled in the program. Any person who is enrolled in the program shall
92 pay, in addition to any fee charged for the program, a supplemental fee of sixty dollars. The
93 administrator of the program shall remit to the division of alcohol and drug abuse of the
94 department of mental health the supplemental fee for all persons enrolled in the program, less
95 two percent for administrative costs. The supplemental fees received by the department of
96 mental health pursuant to this section shall be deposited in the mental health earnings fund which
97 is created in section 630.053, RSMo.

577.048. Upon a plea of guilty or a finding of guilty for an offense of violating the
2 provisions of section 577.010 [or], 577.012 **or 577.015**, or violations of county or municipal
3 ordinances involving alcohol or drug related traffic offenses, the court may, in addition to
4 imposition of any penalties provided by law, order the convicted person to reimburse the state
5 or local law enforcement agency which made the arrest for the costs associated with such arrest.
6 Such costs shall include the reasonable cost of making the arrest, including the cost of any
7 chemical test made [under] **pursuant to** this chapter to determine the alcohol or drug content of
8 the person's blood, and the costs of processing, charging, booking and holding such person in
9 custody. The state and each local law enforcement agency may establish a schedule of such
10 costs; however, the court may order the costs reduced if it determines that the costs are excessive.

577.049. 1. Upon a plea of guilty or a finding of guilty for an offense of violating the
2 provisions of section 577.010 [or], 577.012 **or 577.015**, or violations of county or municipal
3 ordinances involving alcohol or drug related traffic offenses, the court shall order the person to
4 participate in and successfully complete a substance abuse traffic offender program defined in

5 section 577.001.

6 2. The fees for the substance abuse traffic offender program, or a portion thereof, to be
7 determined by the division of alcohol and drug abuse of the department of mental health, shall
8 be paid by the person enrolling in the program. Any person who attends the program shall pay,
9 in addition to any fee charged for the program, a supplemental fee of sixty dollars. The
10 administrator of the program shall remit to the division of alcohol and drug abuse of the
11 department of mental health the supplemental fees for all persons enrolled in the program, less
12 two percent for administrative costs. The supplemental fees received by the department of
13 mental health pursuant to this section shall be deposited in the mental health earnings fund which
14 is created in section 630.053, RSMo.